



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0103; FRL-10003-48-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
West Virginia; Infrastructure Requirements for the 2015 Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submittal from the State of West Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS or standards) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. West Virginia made a submittal addressing most of the infrastructure requirements for the 2015 ozone NAAQS and later supplemented the submittals to address the interstate transport elements; EPA is not proposing any action on the interstate transport elements at this time.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-

0103 at <https://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2021. Mr. Schulingkamp can also be reached via electronic mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: On October 26, 2015, EPA revised both the primary and secondary NAAQS for ozone based on 8-hour average concentrations to 0.070 parts per million (ppm). See 80 FR 65292. Pursuant to CAA section 110(a)(1), states are required to

submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

In the case of the 2015 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 and 2008 ozone NAAQS. Section 110(a)(1) of the CAA provides the procedural and timing requirements for SIPs, while section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned earlier, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS.

I. Background

On September 14, 2018, WVDEP submitted a revision to its SIP to satisfy the requirements of CAA section 110(a)(2) for the 2015 ozone NAAQS (hereafter the "2015 Infrastructure SIP"). This submittal addressed the following elements of CAA section 110(a)(2): (A), (B), (C),

(D)(i)(II), (E), (F), (G), (H), (J), (K), (L), and (M). This submittal did not address CAA section 110(a)(2)(D)(i)(I) (interstate transport), however, the state committed to submitting a supplemental SIP revision to fully address this requirement. On February 4, 2019, the WVDEP supplemented its 2015 Infrastructure SIP to address the interstate transport elements of CAA section 110(a)(2)(D)(i)(I) (hereafter the “2015 Transport SIP”). At this time, EPA is not taking action on West Virginia’s 2015 Transport SIP and will address that submittal in a later separate action.

II. How EPA Evaluates Infrastructure SIPs

Pursuant to CAA section 110(a), states must provide SIP revisions addressing relevant infrastructure SIP elements from section 110(a)(2)(A) through (M) or provide certification that the existing SIP contains provisions adequately addressing these elements for the 2015 ozone NAAQS.

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of CAA section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states’ development and EPA review of infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues, and in others conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents.¹ Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the

¹ EPA explains its approach in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA’s prior action on West Virginia’s infrastructure SIP to address the 2008 ozone NAAQS (79 FR 19001 (April 7, 2014)).

context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.² EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

III. EPA's Analysis

West Virginia's 2015 Infrastructure SIP submittal addressed the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The 2015 Infrastructure SIP submittal did not address element (I) which pertains to the nonattainment requirements of part D, title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) and will be addressed in a separate process.

EPA has analyzed the 2015 Infrastructure SIP submission and is proposing to make a determination that the submittal meets the requirements of the identified elements. A detailed summary of EPA's review and rationale for approving West Virginia's submittal may be found in the technical support document (TSD) for this proposed rulemaking action which is available online at www.regulations.gov, docket number EPA-R03-OAR-2019-0103.

IV. Proposed Action

EPA is proposing to approve West Virginia's September 14, 2018 submittal which provides the basic program elements, or portions thereof, specified in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 2015 ozone NAAQS. This proposed rulemaking action does not include action on

² See *Montana Environ. Info. Center v. EPA*, 902 F.3d 971 (9th Cir. 2018).

section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA and will be addressed in a separate process. This proposed rulemaking action also does not address section 110(a)(2)(D)(i)(I) which pertains to the interstate transport of emissions; EPA will propose action on West Virginia's 2015 Transport SIP in a later separate action. EPA is soliciting public comments on the issues discussed in this document which will be considered before taking final rulemaking action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to West Virginia's section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: December 12, 2019.

Diana Esher,
Acting Regional Administrator,
Region III.

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